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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
 WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 98-72
Table of Allotments,	)	RM-9265
FM Broadcast Stations,	)	
(Middlebury and Berlin, Vermont)	)	

**COMMENTS AND COUNTERPROPOSAL**

Montpelier Broadcasting, Inc. ("MBI"), the licensee of Station WNCS(FM), Montpelier, Vermont, by its attorneys and pursuant to Sections 1.420(a) and (d) of the Commission's Rules, hereby files these Comments and Counterproposal in response to the Commission's Notice of Proposed Rulemaking in MM Docket No. 98-72 ("NPRM"), DA 98-936, released May 22, 1998. In that NPRM, the Commission responded to a Petition for Rule Making, filed by Dynamite Radio, Inc. ("Dynamite"), the licensee of Station WGTK(FM), Middlebury, Vermont, and proposed to substitute FM Channel 265C2 for Channel 265A, reallocate FM Channel 265C2 from Middlebury to Berlin, Vermont, and modify the license of Station WGTK(FM) to specify Berlin in place of Middlebury as the Station's community of license. In support thereof, MBI states as follows.

1. Initially, MBI submits that the Commission should have dismissed the Petition for Rule Making as defective. In that regard, the Petition is in patent violation of Sections 1.52 and 1.401 of the Commission's Rules and does not warrant consideration let alone the issuance of an NPRM. It was filed by an individual party and, as such, had to be verified under the provisions of Section 1.52; but, it was not. It also lacked the necessary supporting information concerning the

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reception services presently available and which will be provided if the Table of Allotments and license are modified. Instead of having a record upon which parties could respond, parties will have to wait for Dynamite to file its Comments and only then respond in Reply Comments. This is contrary to the specific direction in Section 1.401 which calls for the Petition to provide “all facts, views, arguments and data” that support the request. Again, the Petition should have been dismissed as fatally defective and Dynamite required to submit to the Commission a petition that was accurate and complete.

2. Turning to the merits of the Petition, MBI questions the need to undertake the proposed change in the Table of Allotments. At the present time, FM Channel 265 is allotted to Middlebury, Vermont. As indicated by Exhibit A, Middlebury is a community of 6068 persons<sup>1</sup> served by two commercial radio stations: Stations WGTK(FM) and WFAD(AM). In place of that, Dynamite seeks to have Station WGTK(FM)’s license modified so that the Station serves the town of Berlin, whose population of 2556 persons<sup>2</sup> is only 42% of that of Middlebury, though there is no broadcast transmission service at Berlin.

2. The Commission must ask itself why a licensee would be willing to move its community of license from one of the more populous communities in a rural state to one far less populated. This disruption of service to the far larger community of Middlebury should not be undertaken without due consideration of the harm that Middlebury will suffer. “Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued

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<sup>1</sup> 1990 U.S. Census.

<sup>2</sup> Id.

service.”<sup>3</sup> Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7097 (1990). The record is devoid of any material showing on Dynamite’s part that the public interest will benefit from the requested rule changes and, as a result, they should be rejected.

3. Dynamite places critical reliance on the fact that its proposal will result in Berlin securing its first local aural transmission service, while Middlebury will continue to be served by Station WFAD(AM). MBI agrees that the Commission’s allotment priorities provide that first local service is a priority, but it is only slightly less important than first or second aural service and just higher than that of other public interest considerations. Modification of FM and TV Authorizations to Specify a New Community of License, 66 RR 2d 877 (1989). However, even these priorities do not constitute absolute obligations on the Commission’s part and are subject to Commission analysis as to whether the allotment of a first local service to a new community outweighs the harm to the community resulting from the loss of a transmission service. Id. at 883 n. 26. MBI submits that Middlebury, the far larger community, deserves its second service and Berlin, which is already well served by reception services of other stations (see Exhibit B), is not in need of new service. Further, the change in allotments will result, as indicated in Exhibit B, in the loss of critical service to an unserved portion of Essex County, New York which will have only three or four broadcast reception services if the Station’s license is changed from Middlebury. In the weighing contest, involving a small rural community and a far larger rural community as well as the loss of service to an underserved area, MBI submits that the

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<sup>3</sup> Footnote omitted.

continuation of the service to the larger community and the underserved population substantially outweighs the other community's need for a first local transmission service.

4. Assuming, arguendo, that the Commission concludes that the need for first local service prevails, then the Commission must further determine if Berlin, or another community, is entitled to this broadcast transmission service. Dynamite has proposed Berlin as the community entitled to obtain its first local service. MBI disagrees with this conclusion and submits that Hardwick, Vermont should be allotted the new service.<sup>4</sup>

5. Hardwick, like Berlin, is classified as a town in the state of Vermont. As indicated in the attached engineering statement (Exhibit B), Hardwick bears the same indicia of a community as its smaller relation, Berlin. It has its own police and fire departments and local government. Ordinary and necessary community services are located in Hardwick and are provided to the community's residents. More importantly, Hardwick's 1990 U.S. Census population was 2964, which is 16% greater than Berlin's population.

6. Based on the greater population in Hardwick, it, not Berlin, best meets the Commission's allotment criteria. Thus, the Commission, if it is to undertake any reallocation, must do so by allotting the available spectrum to Hardwick, not Berlin, owing to the greater need for a first transmission service at the more populous community, Hardwick. See Rose Hill, Trenton, Aurora and Oracoke, North Carolina, DA 96-2062, released December 13,

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<sup>4</sup> In the event that the Commission determines that Hardwick is the more deserving community, and the allotment is not mutually exclusive with Station WGTV(FM) allotted to Middlebury, MBI wishes to advise the Commission that it will apply for the new station when it is made available for competitive bidding.

1996.

Respectfully submitted,

**MONTPELIER BROADCASTING,  
INC.**

By: \_\_\_\_\_



Barry A. Friedman  
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(202) 331-8800

Dated: July 13, 1998

**Exhibit A**

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**1990 US Census Data**

**Database: C90STF3A**

**Summary Level: state--County--County Subdivision**

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**Berlin town: FIPS.STATE=50, FIPS.COUNTY90=023,  
FIPS.COUSUB90=05650**

**PERSONS**

*Universe: Persons*

Total.....2556

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(URL reload)

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**1990 US Census Data**

**Database: C90STF3A**

**Summary Level: State--County--County Subdivision**

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**Hardwick town: FIPS.STATE=50, FIPS.COUNTY90=005,  
FIPS.COUSUB90=31825**

**PERSONS**

*Universe: Persons*

Total.....2964

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(URL reload)

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**1990 US Census Data**  
**Database: C90STF3A**  
**Summary Level: State--Place**

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**Middlebury CDP: FIPS.STATE=50, FIPS.PLACE90=44275**

**PERSONS**

*Universe: Persons*

Total.....6068

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**Exhibit B**

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**Engineering Statement  
Counter Proposal to RM-9265 MM Docket 98-72  
To amend the FM Table of Allotments  
Addition of Channel 264A at Hardwick Vermont**

**CH 264A at Hardwick, Vermont**

Hardwick is a recognized town in Northeastern Vermont. It is located in Caledonia County and the 1990 US census gives it a population of 2964 persons. Hardwick is a chartered town in the state of Vermont (chartered in 1791), with all forms of local government. It is a center of culture, trade and education for the surrounding rural area. In its borders are located churches, schools, retail and food stores, a weekly newspaper, fire and police services, a private electric department and town government offices.

An allocation study of the Hardwick area was done using the allotment coordinates 44° 30' 12" and 72° 22' 07" (the coordinates of the local post office to the best of our knowledge). Two channels were found that were not precluded by domestic allocations. They are 262A and 264A. Both of these Channels preclude the city of license change and upgrade of WGTV proposed by Dynamite Radio, Inc.

It is the applicant's contention that the public interest would be better served by assigning FM channel 264A to Hardwick rather than channel 265C2 to Berlin for the following reasons;

1. Assigning Ch 264 to Hardwick would give Hardwick a first aural transmission service. The town of Hardwick has a 1990 census population of 2,964 as compared to 2,556 for Berlin.
2. Assigning Ch 264 to Hardwick would increase service to a presently undeserved area. Hardwick FM service is a predicted 60 dbu level from four stations (WEZF, WVPS, WNCS and WLVB), while Berlin is already served by the same strength of signal from six FM signals (WORK, WNUB, WCMD, WNCS, WVPS and WEZF) plus two AM signals of a 2 mV/m signal strength. Further study using Longley Rice signal analysis indicates actual signal levels in the Hardwick area to be in the 25 to 40 dbu range, far below predicted levels. This is due to the rugged terrain in the area. The average listener in the Hardwick area can receive only two broadcast signals clearly.
3. Two of the four stations providing predicted 60 dbu coverage to Hardwick are C class stations licensed to the Burlington market, 66 km distant. Such stations are not responsive to the special needs of Hardwick.
4. Relocation of WGTV from its Middlebury transmitting site will result in the creation of a gray area located to the west of the WGTV licensed facility. Communities in eastern Essex County New York would lose service in three townships and five communities. The total population affected would be 2,960 persons, part of the affected area receiving 60 dbu service from four to three stations.

**Canadian Issues**

The proposed allotment is located within the Canadian/USA border zone, and the proposed allotment would be subject to Canadian approval. As recognized in paragraph 4 of the NPRM. It is requested that the commission seek a specially negotiated short spaced allotment for Hardwick from Canada. We note the fact that this proposal is short spaced to CBF-FM, an operating Canadian station. The Dynamite Radio proposal for WGTV is similarly short spaced to this station. Class C1 Canadian stations are protected to their 54 dbu contour. The corresponding co-channel interfering contour is the 36 dbu. A reduction of 20 db at class height would keep the interfering contour within the US border. However, class height at the reference coordinates would require an antenna AMSL of 513 m. and a tower height of 243 m. From a more reasonable tower height of 30 m.

**Conclusion**

Accordingly, we respectfully request the Commission to amend the table of allotments as follows;

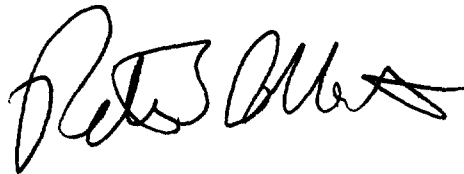
COMMUNITY  
Hardwick Vermont

PRESENT  
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PROPOSED  
264A

**Certification**

I, Peter S. Morton, hereby certify that the foregoing statement was prepared by me, that it is true and correct to the best of my knowledge and belief, and that my qualifications are a matter of record with the Federal Communications Commission, having prepared numerous applications and supporting documents over the past 20 years.

A handwritten signature in black ink, appearing to read "Peter S. Morton", with a stylized flourish at the end.

## EXHIBIT E-1

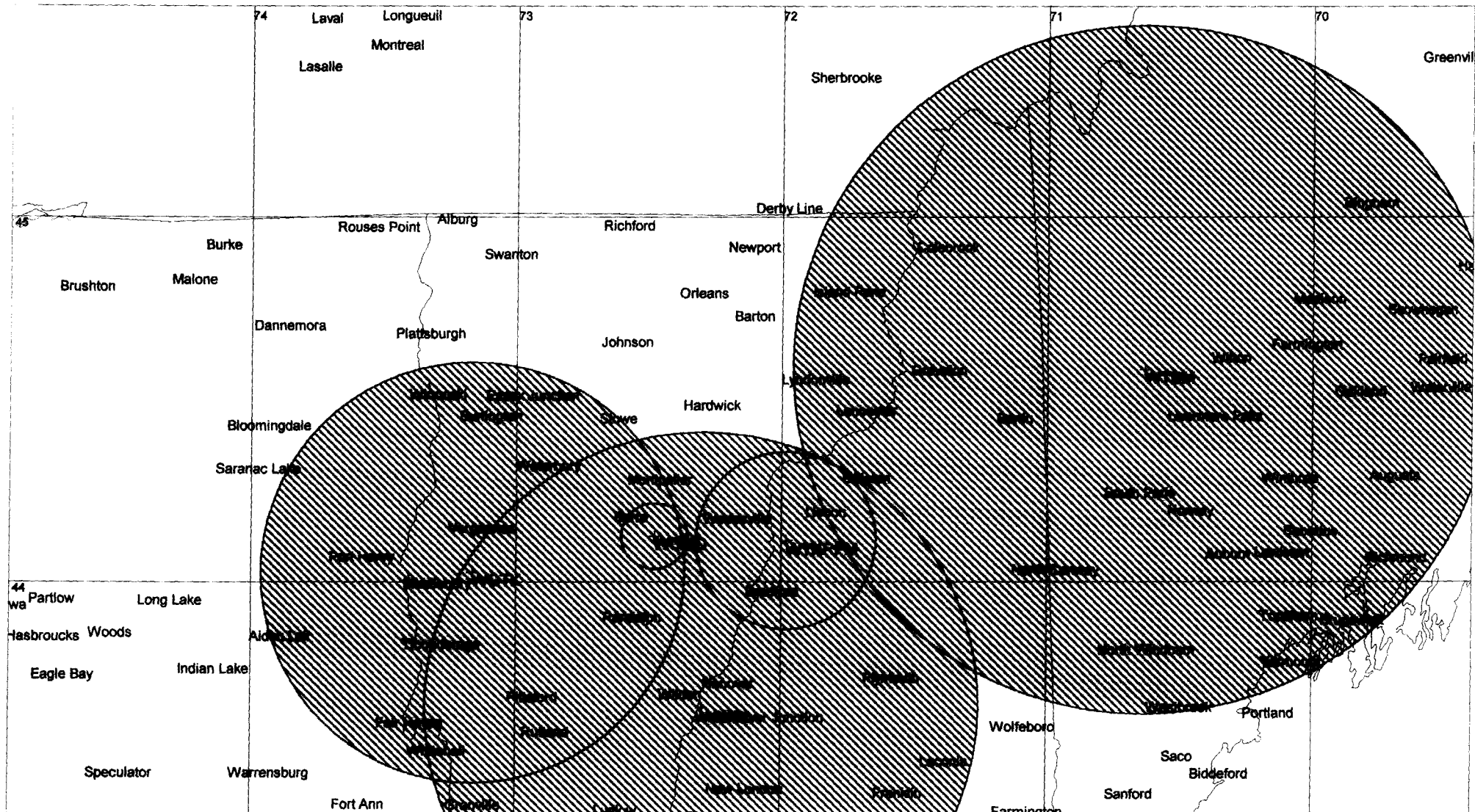
Channel Search For: HARDWICK, VERMONT

201	ED	226	WEZF	251	WGMT	276	WPKQ
202	ED	227	WEZF	252	WGMT	277	WPKQ
203	ED	228	WEZF	253	WOKO	278	WPKQ
204	ED	229	WLVB	254	WOKO	279	<u>WPKQ</u>
205	ED	230	<u>WLVB</u>	255	<u>WOKO</u>	280	WPKQ
206	ED	231	WLVB	256	WOKO	281	WPKQ
207	ED	232	WHOM	257	WOKO	282	WPKQ
208	ED	233	WHOM	258	WOKO	283	WNCS
209	ED	234	WHOM	259	<del>WBTD</del>	284	<u>WNCS</u>
210	ED	235	<u>WHOM</u>	260	<u>WBTD</u>	285	WNCS
211	ED	236	WHOM	261	WBTD	286	WNCS
212	ED	237	WHOM	262		287	WNCS
213	ED	238	WHOM	263	<u>WXXX</u>	288	WNKV
214	ED	239	<u>WSHXX</u>	264		289	<u>WNKV</u>
215	ED	240	WSHX	265	<u>WGTK</u>	290	WNYQ
216	ED	241	WSHX	266	WYKR	291	WMTK
217	ED	242	WSHX	267	<u>WYKR</u>	292	<u>WMTK</u>
218	ED	243	WLTN	268	WYKR	293	WMTK
219	ED	244	<u>WLTN</u>	269	<u>WCVT</u>	294	<u>WIZN</u>
220	ED	245	WLTN	270	WCVT	295	WORK
221	<u>WFOU</u>	246	WGMT	271	WXXS	296	<u>WORK</u>
222	WEZF	247	WGMT	272	<u>WXXS</u>	297	WORK
223	WEZF	248	WGMT	273	WXXS	298	WVPS
224	WEZF	249	<u>WGMT</u>	274	<u>WEQX</u>	299	WVPS
225	<u>WEZF</u>	250	WGMT	275	<u>WBLM</u>	300	<u>WVPS</u>

## Allocation Study 264A Hardwick Vermont

FREQ	CHN	ST	CITY	CALL	CL	ERP	STAT	DST:km	dBu
LATITUDE	LONGITUDE	HAAT:m	AMSL:m			BRNG	SEP:km	CLR:km	
89.9	210	VT	Barre	WCMD	A	0.9	Lic	132.6	60
44-07-32	72-28-36	180		612		11.6		10.0	122.6
100.3	262	QU	Magog	ALC	A	.000	Add	60.4	60
45-16-00	72-09-00	0		0		191.5		62.0	-1.6
100.3	262	QU	Magog	ALC	A	.000	Del	60.4	60
45-16-00	72-09-00	0		0		191.5		62.0	-1.6
100.5	263	NH	Lebanon	ALC	C3	.000	Use	185.7	60
43-39-07	72-22-14	0		0		0.1		84.0	101.7
100.5	263	NH	Lebanon	WXXK	C3	22.0	Lic	186.8	60
43-39-18	72-17-42	99		375		356.4		84.0	102.8
100.7	264	ME	Mexico	ALC	A	.000	Use	196.3	60
44-34-56	70-37-59	0		0		266.4		115.0	81.3
100.7	264	ME	Mexico	WTBM	A	0.2	Lic	196.3	60
44-34-56	70-37-59	393		730		266.4		105.0	91.3
100.7	264	QU	Montreal	CBFFM	C1	100	Lic	58.5	60
45-30-20	73-35-32	251		0		139.1		239.0	-180.5
100.9	265	VT	Middlebury	WGTK	A	3.0	Lic	140.2	60
44-01-34	73-09-44	91		280		50.1		64.0	76.2
101.1	266	QU	Sherbrooke	CBF10F	B	35.0	Lic	86.3	54
45-23-48	71-49-54	173		0		203.1		76.0	10.3
101.3	267	NH	Haverhill	ALC	A	.000	Use	151.5	60
44-03-01	72-04-59	0		0		335.6		31.0	120.5
101.3	267	NH	Haverhill	WYKRFM	A	3.0	Lic	149.0	60
44-06-49	71-58-54	12		363		324.5		27.0	122.0

# Domestic Allocation Window, ch264A

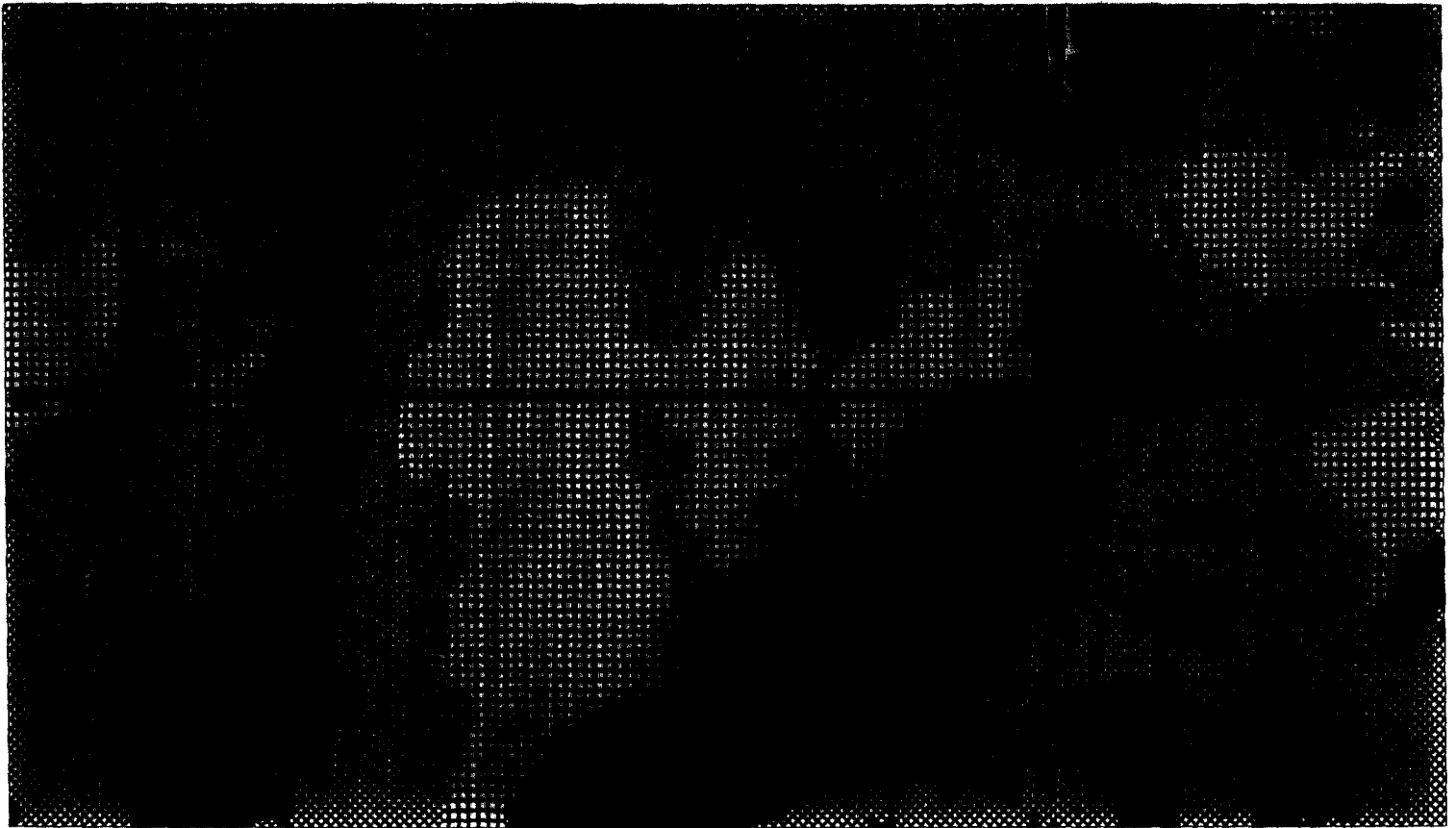


Scale 1:1700000

50 Km

--- FM Service    --- State Borders    - - - Lat-Lon Grids

# WEZF Longley Rice Signal Contours



Scale 1:69000 NBS 101 Svc K=1.33

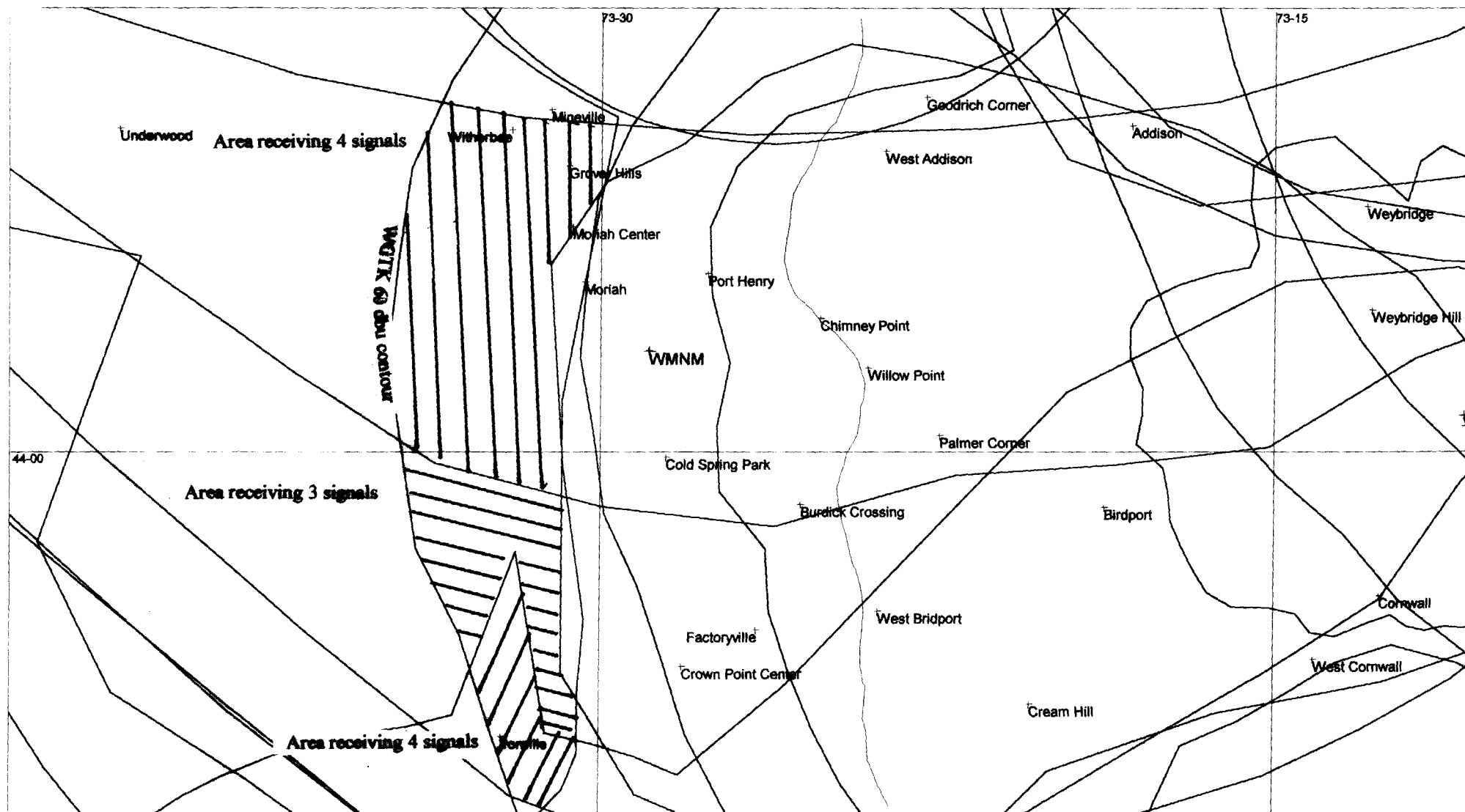
0.2 Km

FM Service State Borders Lat-Lon Grids

100 - 60 dBu 60 - 40 dBu < 40 dBu



# Gray areas created by relocation of WGTK



Scale 1:170000

5 Km

- FM Service    — State Borders    - - Lat-Lon Grids

**CERTIFICATE OF SERVICE**

I, Barry A. Friedman, do hereby certify that I have, on this 13<sup>th</sup> day of July, 1998, served a copy of the foregoing "Comments and Counterproposal" upon the following party by first-class mail, postage prepaid:

Mr. Anthony A. Neri  
President  
Dynamite Radio, Inc.  
74 Exchange Street  
Middlebury, Vermont 05753

